UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 6, 2017 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 8. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE APRIL 4, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 20, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 27, 2017. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 9 THROUGH 19 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON MARCH 13, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 13-32912-A-13 CYNTHIA SOLORZANO — MOTION TO MODIFY PLAN
SS-4 — 1-27-17 [91]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained.

First, the debtor has failed to make $154 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $3,124 is less than the $3,513.85 in dividends and expenses the plan requires the trustee to pay each month.

2. 16-28321-A-13 BENJAMIN/BRANDEE AHLSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 2-13-17 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

The debtor has failed to commence making plan payments and has not paid approximately $1,750 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

3. 16-20640-A-13 MICHAEL/EMMA POST — MOTION TO MODIFY PLAN
PLG-2 — 1-27-17 [45]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained.

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,946.19 is less than the $3,261.87 in dividends and expenses the plan requires the trustee to pay each month.

4. 13-29565-A-13 FLOYD CHRISTENSEN — MOTION TO MODIFY PLAN
PGM-1 — 1-26-17 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained.

The FTB has filed a priority tax claim of $5,473.02. See 11 U.S.C. § 507(a)(1). The plan does not provide for payment in full of this claim as required by 11 U.S.C. § 1322(a)(2).

5. 16-27280-A-13 DEANNE SUAREZ — MOTION TO CONFIRM PLAN
MB-1 — 1-16-17 [33]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained.

First, the motion to confirm the plan indicates the debtor will make a payment of $540 in December 2016 then step-up payments to $783 for the remainder of the 60-month plan. The plan, however, requires one monthly payment of $540 and $640, two monthly payments of $976, and 56 payments of $783. It is unclear what the debtor intends.

Second, whatever the debtor intends, the debtor has failed to pay at least $100 and the debtor has failed to carry the burden of proving the plan's feasibility as required by 11 U.S.C. § 1325(a)(6) because Schedules I and J show that the debtor's monthly net income is only $543. There is no evidence the debtor can afford to step-up the payments.

6. 17-20694-A-13 SHARON LOCKETT — MOTION TO VALUE COLLATERAL
RJ-1 — 2-20-17 [10]
VS. ELITE ACCEPTANCE CORP.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and

any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $5,500 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $5,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $5,500 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

7. 14-31895-A-13 RUDY/LILIA DELUMPA — MOTION TO MODIFY PLAN
MET-4 — 1-25-17 [58]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained.

First, if the plan is modified to reduce the plan payment to $460 a month, the plan either will not pay the priority claim of the IRS in full as required by 11 U.S.C. § 1322(a)(2), or it will take 74 months to do so in violation of 11 U.S.C. § 1322(d).

Second, the plan fails to document and substantiate the assertion that the debtor's monthly net income will decrease from $1,386.40 to $460. To ask that the plan be modified without such proof is bad faith. See 11 U.S.C. § 1325(a)(3).

8. 16-21599-A-13 CHRISTOPHER/GLEE WOODYARD — MOTION TO CONFIRM PLAN
SS-3 — 1-20-17 [138]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained.

First, the debtor has failed to make $4,004.81 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, the plan's feasibility depends on the debtor successfully prosecuting

motions to value the collateral of U.S. Bank and Santander in order to strip down or strip off their secured claims from their collateral. While such motions have been filed, served, and granted, the debtor has failed to lodge orders granting the motions as directed by the court. Absent successful motions the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Third, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure all of the arrears owed to Nationstar. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

Fourth, the plan attempts to provide for secured claims held by U.S. Bank, Santander, and Americredit even though the court has terminated the automatic stay as to the collateral for their secured claims. The proposed plan directs the trustee to not pay secured claims if the automatic stay has been terminated. Hence, the plan provides for the payment and the nonpayment of these three claims.

Fifth, the debtor has failed to accurately complete Form 122C-1. The debtor has taken an impermissible deductions from current monthly income. The debtor has taken an expense deduction for a mortgage held by U.S. Bank that the plan will strip off the debtor’s home. Because nothing will be paid on account of the claim, the former mortgage payment may not be deducted from current monthly income on Form 122C-1. See Thissen v. Johnson, 406 B.R. 888, 894 (E.D. Cal. 2009).

With this deduction eliminated, the debtor must pay no less than $26,902.80 to Class 7 unsecured creditors. Because the plan will pay these creditors nothing, it does not comply with 11 U.S.C. § 1325(b).

Final Rulings Begin Here

9. 13-21001-A-13 TODD WAGNER
PGM-1
VS. JEFFERSON CAPITAL SYSTEMS, L.L.C.

OBJECTION TO CLAIM
1-16-17 [46]

Final Ruling: This objection to the proof of claim of Jefferson Capital Systems has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained but the request for attorney's fees denied.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The evidence in support of the objection indicates the last payment was on January 22, 2009. Therefore, using this date as the date of breach, when the case was filed on January 25, 2013, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

Because there is no proof with the objection that the underlying contract has an attorney's fee provision, the request for fees is denied.

10. 13-32912-A-13 CYNTHIA SOLORZANO
SS-5

MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
1-27-17 [97]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion seeks approval of $3,,110 in additional fees and $75 in costs incurred principally in connection with prosecuting three motions to modify the plan. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

11. 14-32316-A-13 ARLEANER COLLINS
MSK-3
REVERSE MORTGAGE SOLUTIONS, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
2-8-17 [26]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing informs potential respondents that written opposition must be filed and served within 14 days prior to the hearing if they wish to oppose the motion. Because less than 28 days of notice of the hearing was given [27 days' notice was given], Local Bankruptcy Rule 9014-1(f)(2) specifies that written opposition is unnecessary. Instead, potential respondents may appear at the hearing and orally contest the motion. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing potential respondents that written opposition was required and was a condition to contesting the motion, the moving party may have deterred a respondent from appearing. Therefore, notice was materially deficient.

12. 16-25623-A-13 JOHN ANDRADE
SLH-1
VS. DEUTSCHE BANK NATIONAL TRUST

OBJECTION TO
CLAIM
2-2-17 [29]

Final Ruling: The objection will be dismissed without prejudice.

The notice of hearing informs the claimant that written opposition must be filed and served 14 days prior to the hearing if the claimant wishes to oppose the objection to the proof of claim. Because less than 44 days of notice of the hearing was given [32 days' notice was given], Local Bankruptcy Rule 3007-1(b)(2) specifies that written opposition is unnecessary. Instead, the claimant may appear at the hearing and orally contest the objection. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing the claimant that written opposition was required and was a condition to contesting the objection, the objecting party may have deterred the claimant from appearing. Therefore, notice was materially deficient.

13. 16-26524-A-13 ANTHONY/CAMILLE BROOKS
TBK-3

MOTION TO
CONFIRM PLAN
1-6-17 [40]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

14. 16-27065-A-13 GWENDOLYN WHITE — OBJECTION TO CLAIM
MMN-2
VS. EMPLOYMENT DEVELOPMENT DEPARTMENT — 1-9-17 [19]

Final Ruling: This objection to the proof of claim of EDD has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim disallowed as a secured claim but allowed as an unsecured claim, whether priority or nonpriority as may be claimed by EDD.

The proof of claim indicates EDD claims secured status by virtue of a lien recorded in Santa Clara County. Inasmuch as the debtor owns no real or personal property in that county, the claim is disallowed as a secured claim.

15. 14-29066-A-13 ANGELA SMITH — MOTION TO MODIFY PLAN
HLG-3 — 1-26-17 [68]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted and the objection will be overruled on the condition that the plan is further modified in the confirmation order to require 32 (not 21) additional monthly plan payments beginning February 2017. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

16. 15-29587-A-13 MICHAEL/CYNTHIA ORTIZ — MOTION TO MODIFY PLAN
PGM-4 — 1-27-17 [96]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

17. 15-29587-A-13 MICHAEL/CYNTHIA ORTIZ — MOTION TO APPROVE LOAN MODIFICATION
PGM-5 — 2-2-17 [103]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

18. 16-22893-A-13 EMILY CARROLL — MOTION TO APPROVE LOAN MODIFICATION
NUU-3 — 2-1-17 [52]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

19. 14-31895-A-13 RUDY/LILIA DELUMPA — MOTION TO APPROVE LOAN MODIFICATION
MET-5 — 1-25-17 [53]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.